



Appeal Decisions

Site visit made on 4 February 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03rd March 2025

Appeal A Ref: APP/V1260/C/23/3332674

Appeal B Ref: APP/V1260/C/23/3332675

Appeal C Ref: APP/V1260/C/23/3332676

The land and premises at 31 and 31a Sandecotes Road, Poole BH14 8NZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeals are made by Ms Rachel Hayes (Appeal A), Mr Gregory Hayes (Appeal B), and Ms Elizabeth Trott (Appeal C) against an enforcement notice issued by Bournemouth Christchurch and Poole Council.
- The notice was issued on 5 October 2023.
- The breach of planning control as alleged in the notice is development consisting of a retaining structure, a means of enclosure, of approximately 1.4 metres in height adjacent to the retaining structure and located on increased land levels.
- The requirements of the notice are: (i) Alter the rear garden ground levels to the 'proposed ground line' levels as shown in the Approved Plan 9269/201 Rev C (cross sections) dated November 2020 Plot 1 and Approved Plan 9269/202 Rev D (cross sections) dated November 2020 Plot 2 in accordance with planning approval APP/20/01211/F (Attached at Appendix B to this notice). (ii) Demolish the boundary fencing to each side and rear boundaries adjacent to the retaining structures indicated by the blue line between points 'A to A' in the approximate position shown on the Enforcement Notice Plan. (iii) Demolish the retaining structures indicated by the blue line between points 'A to A' shown in the approximate position on the Enforcement Notice Plan, to be consistent with the requirement set out in (i) above. (iv) Remove in its entirety, any resultant debris produced by completion of steps (i), (ii) & (iii) from the land. (v) Following compliance with (i), (ii), & (iii) above, carry out planting along the rear boundary and part of the side boundaries, shown on the Approved Site Plan 9269/200 Rev D dated November 2020 (Attached at Appendix C to the notice) by planting 68 no. *Griselinia littoralis* plants (specification of plants 80-100cm high, of a 10 litre pot size, at a density of 2.5 plants per metre) which is within the area hatched green on the Enforcement Notice Plan. (vi) Following compliance with (v) above, reseed with grass seed or lay grass turf within the area hatched green on the Enforcement Notice Plan.
- The periods for compliance with the requirements are: within 6 months from the date the notice takes effect for steps (i) to (iv), and within the next planning season following compliance with (i) to (iv) for steps (v) and (vi) (the planting season taken as 1 October to 31 March).
- The appeals are proceeding on the grounds set out in section 174(2)(a), (f), and (g) of the Act. Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary matter

1. Section 177(1)(a) of the Act provides that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. Caselaw¹ directs that, so long as there is an appeal under ground (a), I must consider whether any proposed amended development would be part of the matters stated in the notice as constituting a breach of planning control and whether it should be permitted.

¹ *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566

2. The appellants have put forward a set of suggested alternative steps as part of the appeals under ground (f), which would amount to a proposed amended development and comprise part of the matters stated in the notice. As explained below, they would not achieve the purpose of the notice. However, as there are appeals under ground (a) and other parties have been afforded the opportunity to comment on the proposed amended development, I shall consider whether planning permission should be granted for those proposed works as part of the appeals under ground (a).

Ground (a) and the deemed applications for planning permission

3. The main issues are the effect of the development and the proposed amended development on: the character and appearance of the area, with particular regard to a protected tree; and the living conditions of occupiers of 1A Glengariff Road (No.1A), with particular regard to outlook.

Character and appearance

4. The site comprises two recently built detached houses with front driveways and rear gardens in a residential area characterised by a mix of properties of similar and much larger sizes interspersed with trees and other planting. Trees, in particular, make an important positive contribution to the pleasant verdant and sylvan setting. Land levels vary in the locality, such that properties to the south and east are much lower than the site.
5. A sweet chestnut tree (T11) is located north of the site, close to the rear boundary, retaining structure and raised land levels. It is subject to a tree preservation order issued in 1984, and it is described within a Tree Investigation Report (TIR)² as being in early maturity and showing signs of being under stress. Based on everything I have read and seen, it is clear that T11 makes a significant positive contribution to the attractive character and appearance of the area. Indeed, the attractive character and appearance of the area relies to a large extent on trees such as this.
6. The main parties are in dispute as to whether the development has harmed the long-term retention of T11. The TRI was submitted in support of a previous planning application relating to the site, and it explains that it is not clear-cut that significant direct damage has been caused to the tree by the development, and that removing the development could cause damage to roots. However, the TRI also acknowledges that tree roots have not been examined, that the changes in soil level amount to a significant change for the root system, and that burying roots to this depth is not recommended arboricultural practice. Furthermore, the TRI concludes that the large change in soil level is very likely to result in root death if it is not reduced.
7. On the evidence, I am unconvinced that the development has not caused damage to the root system of T11, and it appears likely that the long-term retention of T11 would be harmed if the development were to remain. There is no compelling evidence that removal of the development would not address these issues, or that this would necessarily cause further harm to the tree.

² By Treecall Consulting Ltd, dated 24 August 2022, ref: TP/45822/SC

8. The boundary fencing referred to by the notice can be seen in passing views from Glengariff Road on account of its raised position. It is seen in the context of varying land levels and a mix of rear boundary treatments, where the timber close-boarded fencing and trellis are entirely in-keeping. The retaining structure and fencing do not therefore comprise an unduly prominent or discordant feature aesthetically.
9. In summary on the first main issue, the development is likely to have a detrimental effect on the character and appearance of the area on account of the likely harm it causes to the long-term retention of T11, contrary to Policy PP27 of the Poole Local Plan (2018) (PLP). This requires, amongst other things, development to be of a good standard of design, which will be permitted where it responds to natural features and does not result in the loss of trees that make a significant contribution to the character of the area.

Living conditions

10. The raising of the rear garden levels results in them being much higher than those of the rear garden at No.1A. Photographic evidence showing the pre-existing boundary from within No.1A indicates there was previously close-boarded fencing above raised planter beds, with planting behind. Occupiers of No.1A were therefore accustomed to a tall boundary between their rear garden and the site.
11. However, the retaining structure combined with close-boarded fencing and trellis currently along the shared boundary creates an overbearing, oppressive and visually harsh barrier down one side of No.1A's garden. The retaining structure and fencing has therefore reduced outlook from No.1A on account of its height, and the development is excessively tall compared to the previous boundary treatment.
12. The loss of outlook experienced by occupiers of No.1A is moderate, but the level of harm caused to their living conditions is unacceptable on account of the enclosing effect the development has on their garden space and outlook from rear facing windows. In time, planting within No.1A will go some way towards softening the appearance of the boundary treatment, but this will not restore outlook or mitigate for the loss of outlook.
13. The development therefore causes unacceptable harm to the living conditions of occupiers of No.1A on account of their loss of outlook, contrary to Policy PP27 of the PLP. This requires, in addition to the above and amongst other things, development to be compatible with surrounding uses, which does not result in a harmful impact upon amenity for local residents.

Other matters

14. It has been suggested that some reduction of land levels and replacing artificial turf with grass could be required by planning condition, where planning permission is granted for the works. Aside from whether this could reasonably be required by a precise and enforceable planning condition, there is insufficient evidence to show this would mitigate the likely harm caused to T11 or otherwise make the development acceptable.
15. It appears there was some mutual overlooking between the site and No.1A on account of the site sloping upwards from east to west. While the development may have resulted in a small improvement to the privacy experienced by occupiers of No.1A, it is unlikely that this has created any meaningful benefit in terms of their

living conditions. This is because a degree of mutual overlooking would ordinarily be expected in a residential area with undulating levels, and the former boundary treatment appears to have been sufficient to prevent unacceptable levels of overlooking. Moreover, I note that residential privacy was considered by the Council when granting planning permission reference APP/20/01211/F.

16. The proposed amended development comprises a suggested alternative set of requirements to remove existing fencing, lower the height of the retaining structure, and reduce ground levels within 1 metre of the retaining wall, amongst other things. The written descriptions are not accompanied by any proposed plans and there is very little detail to suggest these works would address the harms caused by the development. It is entirely unclear whether these proposed works would reduce, let alone avoid, any harm to the long-term retention of T11. Moreover, on the limited details provided, the proposed amended development would only slightly improve the outlook of occupiers of No.1A compared to the existing development, and it would continue to cause unacceptable harm to their living conditions.
17. Compared to compliance with the notice, the proposed amended development may offer improved privacy to occupiers of No.1A, but for the same reasons set out above, it is unlikely this would have any meaningful benefit to their living conditions. Overall, the proposed amended development would fail to comply with Policy PP27 of the PLP for the same reasons as the existing development.

Conclusion on ground (a) and the deemed application for planning permission

18. I have found that the development and the proposed amended development are likely to have a detrimental effect on the character and appearance of the area on account of the likely harm caused to the long-term retention of T11. I have also found that they harm the living conditions of occupiers of No.1A. The harms caused by the development and the proposed amended development cannot be mitigated by planning conditions. The development and the proposed amended development are therefore contrary to the development plan as a whole, and there are no material considerations which indicate planning permission should be granted for either of them.
19. The appeals under ground (a) therefore fail and the deemed applications for planning permission are refused.

Ground (f)

20. To succeed under this ground of appeal the appellants need to show that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.
21. The notice requires the retaining structures and boundary fencing to be demolished, ground levels to be altered to reflect 'proposed ground line' levels shown on plans forming part of an implemented planning permission, and approved planting to be carried out. Although it is not explicitly stated in the notice, these requirements are intended to ensure the wider redevelopment of the site accords with condition 10 of planning permission reference APP/20/00033/F, which is referred to by condition 1 of planning permission reference APP/20/01211/F. The purpose of the notice is therefore to remedy the breach, rather than any injury to amenity.

22. I have already addressed the alternative set of requirements put forward by the appellants. Although it is claimed these alternative steps would be more proportionate to remedy the harm the development causes to amenity, they would not achieve the purpose of the notice, which is to remedy the breach.
23. It is claimed that altering ground levels to ensure they reflect those shown in plan references 9269/201 Rev C and 9269/202 Rev D would leave the garden of No.1A subject to excessive overlooking and could cause damage to T11. As addressed above, I am unconvinced that damage would necessarily be caused to T11, and it would remain the appellants' responsibility to avoid causing such damage to the protected tree. There is nothing to suggest any potential harm to T11 could not be avoided. Furthermore, any increase in overlooking would be as previously permitted and beyond my powers to avoid when the breach is being remedied in accordance with an implemented planning permission.
24. However, as an alternative to ensuring the wider development accords with condition 10, it would also be appropriate for the notice to offer the opportunity to restore the land to its condition before the breach took place. I note former levels of the site are shown in a topographical survey attached to the TIR. I shall therefore vary the requirements of the notice and the text specifying the time for compliance to provide the opportunity to restore land within the relevant area to its previous condition, consistent with section 173(4)(a) of the Act.
25. Other than restoring the land to its state before the breach took place, there are no obvious alternatives or lesser steps which would achieve the purpose of the notice with less cost and disruption. The requirements of the notice, as varied, are therefore proportionate to remedy the breach.
26. As the requirements of the notice will be varied, the appeals under ground (f) succeed, but only to the extent that I shall introduce an optional alternative requirement to restore the affected land to its condition before the breach took place.

Ground (g)

27. To succeed under this ground of appeal the appellants need to show that any period specified in the notice for compliance with its requirements falls short of what should reasonably be allowed.
28. It is requested that a twelve month period is allowed for steps (i) to (iv) of the notice to be complied with, rather than the six specified in the notice. This is on account of the disruptive nature of the works and to find and engage a suitable contractor. No evidence has been provided to suggest six months is an unreasonably short period to avoid disruption or to find and engage a suitable contractor.
29. I do not doubt that works will be disruptive, but this would be unavoidable, and a direct result of the development being carried out without planning permission. Care would need to be taken to avoid damaging T11, but there are no details to suggest this could not reasonably be achieved within six months. In the absence of evidence to suggest a period of six months is unreasonably short, I see no reasons to extend the compliance period.
30. The appeals under ground (g) therefore fail.

Conclusion

31. For the reasons given above, I conclude that the appeals should not succeed, other than to the extent outlined above in respect of ground (f). I shall uphold the enforcement notice with variations and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the Act.

Formal Decision

32. It is directed that the enforcement notice is varied by:

- the addition of the following text after step (vi) at paragraph 5 of the notice: 'Or, (vii) as an alternative to the above steps, restore the land to its condition before the breach took place'; and
- the addition of the following text after the note at paragraph 6 of the notice: 'c) Step (vii) within 6 months from the date this notice takes effect'.

33. Subject to the variations, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the applications deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR